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# HOUSE BILL No. 1762

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-13.

**Synopsis:** Breaks for pregnant employees. Requires an employer to provide a break of at least one hour for pregnant employees scheduled to work at least eight consecutive hours. Establishes civil penalties for violation of the requirement.

**Effective:** Upon passage; July 1, 2005.

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January 19, 2005, read first time and referred to Committee on Employment and Labor.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1762

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-2-13 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]:  
4 **Chapter 13. Breaks for Pregnant Employees**  
5 **Sec. 1. This chapter applies to an employer that, during any**  
6 **work week, employs at least one (1) employee in Indiana.**  
7 **Sec. 2. As used in this chapter, "department" refers to the**  
8 **Indiana department of labor.**  
9 **Sec. 3. As used in this chapter, "employee" means an individual**  
10 **who:**  
11 **(1) is employed for consideration for at least twenty (20)**  
12 **hours each week; or**  
13 **(2) renders any other standard of service generally accepted**  
14 **by custom or specified by contract as full-time employment.**  
15 **The term does not include an independent contractor.**  
16 **Sec. 4. As used in this chapter, "employer" means:**  
17 **(1) an individual;**



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- (2) a partnership;
- (3) an association;
- (4) a limited liability company;
- (5) a corporation;
- (6) a business trust;
- (7) the state;
- (8) a municipal corporation (as defined in IC 36-1-2-10); or
- (9) a nonprofit organization.

The term does not include the federal government or an agency or instrumentality of the federal government.

**Sec. 5. (a)** An employer shall provide a break of at least one (1) hour for an employee who is:

- (1) scheduled to work at least eight (8) consecutive hours; and
- (2) verified as pregnant under section 6 of this chapter.

**(b)** The break required by subsection (a) must begin not later than the beginning of the employee's sixth consecutive hour of work.

**Sec. 6.** Before providing an employee a break under section 5 of this chapter, an employer may require the employee to submit written verification that:

- (1) confirms the existence of the pregnancy;
- (2) indicates the expected date of delivery; and
- (3) is provided by a licensed physician or other health care provider who has the primary responsibility for the treatment and care of the employee.

**Sec. 7.** A notice in a form approved by the department setting forth the rights of employees under this chapter must be:

- (1) conspicuously and continuously posted by the employer in an area in which employees are routinely employed; or
- (2) disseminated to the employees in a manner reasonably intended to give notice.

**Sec. 8.** The department may adopt rules under IC 4-22-2 to implement this chapter.

**Sec. 9. (a)** The department shall enforce this chapter.

**(b)** The department and its inspectors and agents may visit and inspect, at reasonable hours and as often as practicable and necessary, employers that are subject to this chapter.

**(c)** A person may not:

- (1) interfere with, obstruct, or hinder a department inspector or agent; or
- (2) refuse to properly answer questions asked by a department inspector or agent;

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1 who is performing duties under this chapter.

2 **Sec. 10. (a) An employer shall be issued a warning letter for any**  
 3 **violations identified during an initial inspection under this chapter.**

4 **(b) For violations of this chapter that are identified during an**  
 5 **inspection subsequent to the initial inspection, an employer may be**  
 6 **assessed the following civil penalties by the department:**

7 **(1) Except as provided in subdivisions (2) and (3), one**  
 8 **hundred dollars (\$100) per violation.**

9 **(2) For an employer's third violation and each additional**  
 10 **violation, two hundred dollars (\$200) per violation.**

11 **(3) If at least four (4) violations by the employer occur in a**  
 12 **two (2) year period that begins with the employer's first**  
 13 **violation, four hundred dollars (\$400) per violation for the**  
 14 **fourth violation and each additional violation.**

15 **(c) A civil penalty assessed under subsection (b):**

16 **(1) is subject to IC 4-21.5-3-6; and**

17 **(2) becomes effective without a proceeding under IC 4-21.5-3**  
 18 **unless the employer requests an administrative review not**  
 19 **later than thirty (30) days after the employer receives the**  
 20 **notice of assessment.**

21 **(d) A civil penalty may be assessed under subsection (b) for a**  
 22 **continuing violation first identified during an initial inspection if**  
 23 **the violation continues one (1) year after the date a warning letter**  
 24 **is issued by the department under subsection (a).**

25 **(e) For purposes of determining recurring violations of this**  
 26 **chapter, each location of an employer must be considered separate**  
 27 **and distinct from another location of the same employer.**

28 **Sec. 11. (a) An employer may not:**

29 **(1) shorten an employee's scheduled work period to avoid**  
 30 **providing a break otherwise required under this chapter; or**

31 **(2) discharge or otherwise discriminate against an employee**  
 32 **who:**

33 **(A) files a complaint;**

34 **(B) causes another person to file a complaint;**

35 **(C) assists or intends to assist in an investigation or a**  
 36 **proceeding; or**

37 **(D) testifies or intends to testify in an investigation or a**  
 38 **proceeding;**

39 **concerning the rights and duties under this chapter.**

40 **(b) A person who is aggrieved by an alleged violation of**  
 41 **subsection (a) may file a written complaint with the department**  
 42 **not later than thirty (30) days after the person discovers or should**

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1 have discovered the alleged violation.

2 (c) If a complaint is filed under subsection (b), the department  
3 shall investigate the complaint and attempt to informally resolve  
4 the complaint.

5 (d) If the complaint is not informally resolved forty-five (45)  
6 days after the department receives the complaint, the department  
7 shall initiate a proceeding under IC 4-21.5-3-6 and adjudicate the  
8 complaint under IC 4-21.5-3.

9 (e) The department shall join:

10 (1) the complainant; and

11 (2) the employer who is alleged to have committed a violation  
12 under subsection (a);

13 as parties to the proceeding.

14 (f) Unless the parties to the proceeding agree to a later date or  
15 the interests of justice require a later date, the presiding officer of  
16 the proceeding shall schedule a hearing on the complaint to be held  
17 not later than ninety (90) days after the department receives the  
18 complaint.

19 (g) The department may issue any reasonable order to remedy  
20 a violation under this section, including any of the following:

21 (1) An order that the employee be reinstated in the position or  
22 an equivalent position that the employee held before the  
23 violation.

24 (2) A requirement that the employer reimburse the  
25 complainant for compensation and benefits lost as a result of  
26 the violation.

27 (3) A requirement that the employer pay the complainant  
28 reasonable attorney's fees incurred in bringing the complaint  
29 and participate as a party in the informal and formal  
30 proceedings under this section.

31 (4) A requirement that the employer pay a civil penalty to the  
32 complainant in an amount not to exceed one thousand dollars  
33 (\$1,000).

34 Sec. 12. This chapter does not prohibit an employee from taking  
35 a break granted under any of the following:

36 (1) Another law.

37 (2) A bona fide agreement between the employee and the  
38 employer or a representative of the employee and the  
39 employer.

40 (3) A policy of the employer.

41 Sec. 13. This chapter does not prohibit an employer from  
42 providing other breaks in addition to the requirements of this

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1 chapter.

2 SECTION 2. [EFFECTIVE JULY 1, 2005] IC 22-2-13, as added  
3 by this act, does not excuse noncompliance with a provision of a  
4 collective bargaining agreement or other employment benefit  
5 program or plan in effect on July 1, 2005, that is not in substantial  
6 conflict with IC 22-2-13, as added by this act. IC 22-2-13, as added  
7 by this act, does not justify an employer reducing employment  
8 benefits provided by the employer that exceed the benefits required  
9 by IC 22-2-13, as added by this act.

10 SECTION 3. [EFFECTIVE UPON PASSAGE] (a)  
11 Notwithstanding IC 22-2-13-8, as added by this act, the  
12 commissioner of labor shall carry out the duties imposed upon the  
13 Indiana department of labor under IC 22-2-13, as added by this  
14 act, under interim written guidelines approved by the  
15 commissioner of labor.

16 (b) This SECTION expires on the earlier of the following:  
17 (1) The date rules are adopted under IC 22-2-13-8, as added  
18 by this act.  
19 (2) July 1, 2006.

20 SECTION 4. An emergency is declared for this act.

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